90-1409 ①

Supreme Court, U.S.
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No. ____ ____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

MAURY HEXAMER,

Petitioner,

v.

PATRICK FORENESS, ET AL. ,
Respondents.

Petition for Writ of Certiorari To the United States Court of Appeals for the Fifth Circuit

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QUESTIONS PRESENTED

DID THE FEDERAL DISTRICT COURT HAVE FEDERAL QUESTION JURISDICTION PURSUANT TO 28 U.S.C. SECTION 1331 TO CONSIDER PETITIONER'S COMPLAINT AGAINST FEDERAL EMPLOYERS WHO INTENTIONALLY REFUSED TO GARNISH WAGES FOR CHILD SUPPORT, AS REQUIRED BY 42 U.S.C. SECTION 659?

IF SO, DID THE DISTRICT COURT ERR IN FAILING TO ASSESS SANCTIONS AND IN FAILING TO GRANT PETITIONER'S MOTION FOR SUMMARY JUDGEMENT?

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OCTOBER TERM, 1990

MAURY HEXAMER,

Petitioner,

v.

PATRICK FORENESS, ET AL.*,
Respondents.

Petition for Writ of Certiorari
To the United States Court of Appeals
for the Fifth Circuit

HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COMES Maury Hexamer, Petitioner herein, pro se, and files this Petition for Writ of Certiorari.

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*Other parties hereto are Respondents United States Postal Service and Phoenix Postmaster

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit was entered on November 6, 1990 and is attached hereto as Appendix A. The order that the petition for panel rehearing is denied, treating the suggestion for rehearing en banc as a petition for panel rehearing, was entered on December 4, 1990: attached hereto as Appendix B. The Memorandum and Order of the district court dismissing Petitioner's cause for lack of subject matter jurisdiction was entered on February 26, 1990, and is attached hereto as Appendix C. The Order denying Petitioner's Motion to Set Aside Order of Dismissal was entered on April 5, 1990, and is attached hereto as Appendix D.

STATEMENT OF GROUNDS INVOKING JURISDICTION OF THE UNITED STATES SUPREME COURT

1. On November 6, 1990 the United States Court of Appeals for the Fifth Circuit issued an unpublished opinion affirming the trial court's dismissal of Petitioner's complaint (Appendix E) for lack of subject matter jurisdiction. (Appendix A)

2. On December 4, 1990 the United States Court of Appeals for the Fifth Circuit issued an Order that the petition for panel rehearing is denied, treating Petitioner's suggestion for rehearing en banc as a petition for panel rehearing. (Appendix B)

3. This Petition for Writ of Certiorari is filed within 90 days of the Order denying petition for panel rehearing.

4. Petitioner believes that the following statutory provision confers

jurisdiction on this honorable court to review the judgement in question by writ of certiorari: 28 U.S.C. Section 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE:

United States Constitution,

Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Federal Statutes:

42 U.S.C. Section 659:

(a) Notwithstanding any other provision of law (including section 407 of this title) effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

(b) Service of legal process brought for the enforcement of an individual's obligatins to provide child support or make alimony payment shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated for receipt of such service of process pursuant to regulations promulgated pursuant to section 661 of this title (or, if no agent has been designated for the governmental entity having payment responsibility for the moneys invlved, then upon the head of such governmental entity). Such process shall be accompanied by sufficient data to permit prompt identification of the individual and the moneys involved.

(c) No Federal employee whose duties include responding to interrogatories pursuant to requirements imposed by section 661(b)(3) of this title shall be subject under an law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by him in connection with the carrying out of any of his duties which pertain (directly or indirectly) to the answering of any such interrogatory.

(d) When any person, who is designated by law or regulation to accept service of process to which the United States is subject under this section, is effectively served with any such process or with interrogatories relating to an individual's child support or alimony payment obligations, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is so made of any such process, send written notice that such process has been so served (together with a copy thereof) to the individual whose moneys are affected thereby at his duty station or last known home address.

(e) Governmental entities affected by legal processes served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.

(f) Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due por payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to acarry out this section.

28 U.S.C. Section 1331:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

Federal Regulation:

5 C.F.R. Section 581.305(a)(6): Where notice is received that the obligor has appealed either the legal process or the underlying alimony and/or child support order, payment of moneys subject to the legal process shall be suspended until the government entity is ordered by the court, or other authority, to resume payments. However, no suspension action shall be taken where the applicable law

of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending. Where the legal process has been issued by a court in the District of Columbia, a motion to quash shall be deemed equivalent to an appeal"

STATEMENT OF THE CASE

Petitioner brought this suit in a federal district court against federal employers who refused to honor a duly-served Texas order for child support garnishment. Respondents filed much-belated pleadings which alleged that an exparte Arizona Court Order which issued after the suit was filed.

excused compliance with the Texas Order. The basis for federal jurisdiction in the court of first instance was 28 U.S.C. Section 1331. After a hearing on Petitioner's Motion for Summary Judgement, the District Court dismissed for lack of subject matter jurisdiction.

Statement of Facts

Petitioner is the mother of four children, now past the age of eighteen. Petitioner had custody of all four children. (Appendix E, Ex.A at 4; Ex.B) The adoptive or biological father of these children is Joseph Tucker, an employee of the United States Postal Service.

Petitioner and Tucker were duly married under Texas law; however, the marriage became insupportable and Petitioner filed for divorce. (Appendix E, Ex.A at 3) In May, 1973 the Texas parties*: awarded Petitioner custody of her four children, and ordered Tucker to pay the total sum of $200.00 per month in child support. (Id. at 2,4, & 7)

Tucker remained in Rhodesia and other locations in Africa for many years and later moved to Arizona. He paid no child support. At all times relevant hereto, Petitioner has sought all available means of enforcement of her Texas decree.

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*Ft.#2: The Texas Order is not subject to collateral attack and is res judicata of the findings regarding jurisdiction and Tucker was well-represented by Texas counsel. Tucker was also represented by Counsel from Rhodesia: Tucker's attorneys forwarded to the Texas Court copies of legal proceedings instituted by Tucker four days before the final Texas Order: in the General Division of the High Court of Rhodesia. These documents included a transcript of proceedings in that forum and instructions that "...no disrespect was intended to [the Texas] Court...[but] according to Rhodesian Law [the Texas] Court did not have jurisdiction..." (Appendix F).

her Texas decree. On November 9, 1987 a hearing was held to consider a motion filed on Petitioner's behalf by the Texas Attorney General. Tucker was again served with process in Arizona, but again failed to appear. (Appendix E, Ex.B) On November 25, 1987 the Texas court issued to Respondents an "Employer's Order" for withholding of income. (Appendix E, Ex.C) The Employer's Order was first served on Respondent Phoenix Postmaster on December 10, 1987. On March 17, 1988 it was served on Respondent Foreness. All of Respondents herein have intentionally refused to comply with the Employer's Order. Petitioner has not yet received any payments due her under the Texas Employer's Order.

Course of Relevant Proceedings in the District Court:

Petitioner filed her Original Complaint on April 15, 1988 against Respondents Foreness (postal fiscal officer), and Phoenix Postmaster (Tucker's supervisor). On July 14, 1989 the Court entered an order which suggested that to avoid dismissal, Plaintiff should amend her complaint to name the United States Postal Service as a defendant. (ROA 66) On July 19, 1989 Petitioner filed her First Amended Complaint. (Appendix E)

On December 18, 1989 the Court held a hearing on Petitioner's Motion for Summary Judgement and Petitioner's First Amended Motion for Temporary Injunction. (ROA I) On February 26, 1990 the Court issued a Memorandum and Order that this Cause be dismissed for want of subject matter jurisdiction. (Appendix C) On April 5, 1990 the Court entered an Order denying Petitioner's Motion to Set Aside Dismissal. (Appendix D)

Course of Relevant Proceedings in Appellate Court:

On November 6, 1990 the United States Court of Appeals for the Fifth Circuit issued an unpublished opinion affirming the dismissal of the district court for lack of subject matter jurisdiction. (Appendix A) On December 4, 1990 the Fifth Circuit issued an order that the petition for panel rehearing be denied, treating Petitioner's suggestion for rehearing en banc as a petition for panel rehearing. (Appendix B)

ARGUMENT

There are special and important reasons for granting the instant petition for writ of certiorari. Petitioner's complaint arose from the intentional failure by government employers to honor a duly-served writ of garnishment for child support* as required by 42 U.S.C. Section 659 and its implementing regulations. This Court's decision in United States v. Morton, 467 U.S. 822, 81 LEd2d 680 (1985) is applicable to the instant case insofar as it affirms the subject matter

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*Ft.#3: As the Honorable Justice O'Connor stated her concurring opinion, joined by the Honorable Justice Scalia, in Rose v. Rose, 481 US 619, 95 LEd2 599, 616 (1987): "...the support obligation has always been granted a special place in our law...".

jurisdiction of the federal courts and supports Petitioner's proffered construction of Section 659. The dismissal for lack of subject matter jurisdiction by the trial court which was affirmed by the Fifth Circuit has decided this important federal question in a way that conflicts with Morton.

In addition, this honorable Court should exercise its jurisdiction to to resolve a conflict in the Circuits. The decision of the Fifth Circuit affirming dismissal for lack of subject matter jurisdiction is in conflict with the opinion rendered by the United States Court of Appeals for the Eleventh Circuit in Loftin v. Rush, 767 F.2d 800 (11th Cir. 1985) on the same matter. Loftin was likewise a child-support obligee who filed a complaint against federal employers for failure to comply with 42 U.S.C. Section 659 after they were properly served with process. In Loftin, "...the government [was] ordered to pay over to Loftin the money it should have withheld..." after it was properly served with process. Id. at 810. The 11th Circuit saw no barrier to its exercise of subject matter jurisdiction.

Petitioner's case against the government is a classic example of one that "...arises under the Constitution [and/or] laws of the United States..." as defined in a long line of cases from this honorable Court: e.g. Morton, supra; Califano v. Sanders, 43 U.S. 99, 51 LEd2 192 (1977); Bell v. Hood, 327 U.S. 676, 90 LEd 939 (1946). Petitioner's right to recover is dependent on her proffered construction of Section 659. Petitioner's entitlement to government funds is as protected by the 5th Amendment right of due process as was the right of entitlement alleged by Respondent Morton. Moreover, the Fifth Circuit's rejection of Petitioner's claims did not turn on the requisite analysis. Rather, the Fifth Circuit applies an expanded version of the so-called "...domestic relations exception..."* to bar Petitioner's claims. The Fifth Circuit's application of this "...exception..." to preclude federal jurisdiction which would be otherwise

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*Ft.4: This exception is explained at length in Erspan v. Badgett, 647 F.2d 550, ft.#1 at 553 (5th Cir. 1981) cert. den. 455 U.S. 945; and in Rykers v. Alford, 632 F.2d 895 (5th Cir. 1987).

available is wholly inconsistent with traditional notions of equal justice and due process of law. Moreover, it cannot be squared with Congressional intent expressed in 42 U.S.C. Section 659.

This Court has observed that questions of domestic relations between husband and wife and parent and child belong to the laws of the States and not to the laws of the United States. For example, in Hisquierdo v. Hisquierdo, 439 US 572, 59 LEd2 1 (1979): Justice Blackmun observed, for example, that:

> "...Insofar as marriage is within temporal control, the States lay on the guiding hand. 'The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.' In re Burrus, 136 US 586, 593-594, 34 L Ed 500, 10 S Ct 850 (1890). Federal courts repeatedly have declined to assert jurisdiction over divorces that presented no federal question. See, e.g., Ohio ex rel Popovici v. Alger, 280 US 379, 74 LEd 489, 50 S Ct 154 (1930)."

In the instant case, all questions of domestic relations in the instant case have been long-since resolved. (Appendix E, Ex's. 1, 2, & 3) Moreover, the obligations of the government herein do not turn on any question of domestic relations. This Court has never suggested that federal question jurisdiction would ever be unavailable where a bonafide federal question against the government is present. In fact, this Court has been historically willing to search at length for an applicable federal law even in a domestic relations context.

For example: In re Burrus, supra, arose from a bitter, interstate, custody dispute between a child's widowed father and her grandparents. The child's father sought and was granted a writ of habeas corpus by a federal district court to regain custody of the child. In a subsequent contempt proceeding against the grandfather, the Supreme Court found that the federal district court had lacked subject matter jurisdiction: federal question jurisdiction was lacking because the United States was not involved and because there was no applicable provision of federal law. 74 LEd 489, 596. The lengthy search for an applicable federal law in that case belies the Fifth Circuit premise that there exists a "...domestic relations exception..." to federal question jurisdiction.

In its unpublished opinion, the Fifth Circuit relies in part on a construction of 42 U.S.C. 660, which is wholly inapposite:

"...42 U.S.C. Section 660. Certification by the Secretary [of Health and Human Services] is an absolute prerequisite to enforcement of child support decrees in federal courts." (Appendix A, A-11, A-12)

This suggests that 42 U.S.C. Section 660 can be construed to limit, rather than to expand, federal jurisdiction. But Section 660 expands jurisdiction by allowing a child-support obligee to file suit in federal court directly against a child-support obligor, without regard to the amount in controversy, under certain circumstances. There is nothing in the plain language of 42 U.S.C. Section 660 or any prior case law which suggests that certification by the Secretary is a prerequisite to a suit against government employees for failing to comply with 42 U.S.C. Section 659.

This Court apparently has had no prior occasion to rule on a due process complaint presented by a child-support obligee under Section 659. However, Section 659 was construed and discussed at length by this Court in the case filed by Morton, a child-support obligor. The rights of Petitioner and her children are no less worthy or substantial than those alleged and accorded due process protection in Morton at 81 LEd2 at 686, par.3. Petitioner respectfully urges this Court to take this opportunity to resolve the apparent confusion among the lower courts regarding the requirements of Section 659 which has had the unfortunate result of encouraging noncompliance with this statute by government agencies.

Petitioner's case unquestionably presents a clear federal question. Moreover, the "...temporal control..." of any state over Petitioner's former marriage or the child-support obligation is long-since past and presents no issues pertaning to the government's liability under 42 USC Section 659.

There are other important reasons for granting the writ sought by Petitioner. As in Morton, the holding of the Circuit Court "... creates a substantial risk of imposing significant liabilities upon the United States as a result of garnishment proceedings..." supra, 81 LEd2 at 686. In Morton, the liability was imposed by the Federal Circuit; whereas in the instant case, the Circuit Court affirmed dismissal the claims for want of subject matter jurisdiction. However, the government not only remains liable: the liability continues to accrue at the rate of $300.00 per month. (Appendix E, Ex.C) In addition, the government is liable for court costs and reasonable attorneys fees: Texas Family Code 14.43(1). In passing 42 U.S.C. Section 659 Congress has expressly waived sovereign immunity for federal employers who are served with process in accordance with that statute.

The district court clearly erred in overruling Petitioner's Motion for Summary Judgement which was established primarily on the exhibits presented in Appendix E. The primary effect of the actions taken by the lower courts herein which sanction both outright refusal to comply with the Texas garnishment order and Respondent's subsequent, albeit frivolous inquiry into the state court's jurisdiction will ultimately be one of anguished delay and increasing government liability. As this Court observed in Morton, 81 LEd2 680, 691

(1985):

> ...the underlying purpose of Section 659 is significant. The statute was enacted to remedy the plight of persons left destitute because they had no speedy and efficacious means of ensuring that their child support and alimony would be paid. Burdening the garnishment process with inquiry into the state court's jurisdiction over the obligor can only frustrate this fundamental purpose as a consequence of the resulting delay in the process of collection. And '[b]ecause delay so often results in loss of substantial rights, the effect frequently will be also to make impossible the ultimate as well as the immediate collection of what is due; and to substitute a right of lifelong litigation for one of certain means of subsistence.' Griffin v. Griffin, 327 US 220, 239, n4, 90 LEd 635...(1946)(Rutledge, J. dissenting in part) Such a result could not be more at odds with congressional intent."

In the instant case, the government's liability is without question: there is nothing in Section 659 which suggests that Congress intended to preclude otherwise-available federal question jurisdiction to enforce compliance with this statute by government agencies. This honorable Court should exercise its discretion to prevent the government from continuing to thwart the will of Congress.

CONCLUSION

For the above reasons, Petitioner respectfully requests that the Petition for Writ of Certiorari be granted to review the questions presented herein.

Respectfully submitted,
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-APPENDIX A-

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 90-4311
(Summary Calendar)

MAURY HEXAMER,
Plaintiff-Appellant,

versus

PATRICK FORESNESS, DIRECTOR, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Texas
(S-88-119-CA)

(November 6, 1990)

Before GEE, SMITH and WIENER, Circuit Judges.

Per Curiam:*

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Plaintiff-Appellant, Maury Hexamer, former wife of a postal employee, Joseph Tucker, brought this suit, pro se, in the district court, naming as defendants Patrick Foreness, Director of the Postal Data Center for the United States Post Office; the postmaster of the United States Post Office in Phoenix, Arizona; and an "Unknown Arizona Court." Hexamer complained of violations of the Child Support Enforcement Act, 42 U.S.C. SS651-665 (the Act), and Article IV., Section 1, and Article VI., Section 2, of the United States Constitution, in connection with the defendants' refusal to enforce Texas child support judgements Hexamer had obtained against Tucker in state courts there. The district court, sua sponte, dismissed Hexamer's complaint for lack of subject matter jurisdiction, and she filed this appeal. Finding no reversible error, we affirm.

I.

Almost 15 years after Hexamer obtained a divorce from Tucker in Texas, she obtained a Texas judgement against Tucker for unpaid child support. By then he was residing in Arizona. Hexamer immediately obtained an order from the Texas court to withhold child support payments from Tucker's wages as an employee of the post office in Phoenix.

Tucker obtained an Arizona court order quashing the child support and custody provisions of the original Texas divorce decree and quashing the current child support and garnishment orders as well. The Arizona court found that the

Texas court lacked personal jurisdiction over Tucker, and the postal service refused to obey the Texas garnishment order.

II.

In April, 1988, Hexamer filed this suit in the Eastern District of Texas. In November of that year the district court ordered Hexamer to show cause why service had not been made within the period specified in the Federal Rules of Civil Procedure. Hexamer showed that copies of the complaint had been received by (1) Foreness, (2) Postmaster, Phoenix, Arizona, and (3) Honorable Edwin Meese. The next month Hexamer filed Plaintiff's Opposition to Dismissal & Conditional Motion for Extension of Time to Obtain Service of Process, in response to which the district court gave her additional time within which to serve the United States Attorney.

In February, 1989, the defendants filed a motion to dismiss which was followed by Hexamer's filing of a Response to Defendants' Motion, a Motion for Attorneys' Fees and Sanctions, and a Brief, together with a request for a hearing. In May of that year a hearing was set on all pending motions. Hexamer filed for a temporary injunction in July, immediately after which the district court deferred rulings on defendants' motion to dismiss and gave Hexamer 60 days to amend her complaint and effect service. Six days later Hexamer filed Plaintiff's First Amended Complaint; and in early October of 1989, filed Plaintiff's Amended Motion for

Temporary Injunction & For Hearing Thereon. The next week she filed Plaintiff's Motion for Summary Judgement & For a Hearing Thereon. Thereafter, Hexamer filed Plaintiff's Motion for Default Judgement & Plaintiff's Third Motion for Hearing. A hearing was then set on Plaintiff's First Amended Motion for Temporary Injunction. The defendants responded to Hexamer's Motion for Summary Judgement and filed a second motion to dismiss.

Late in December of 1989, Hexamer filed Plaintiff's Motion to Strike Defense Pleadings. The defendants then filed their answer to the First Amended Complaint, and also moved for summary judgement. Hexamer then filed Plaintiff's Second Motion to Strike Defense Pleadings & Plaintiff's Response to Defendants' Motion for Summary Judgement (defendants had moved for an extension of time to answer interrogatories).

In February of 1990, the district court dismissed Hexamer's suit, granting no relief. Hexamer filed Plaintiff's Motion to Set Aside Order of Dismissal & Brief. The district court refused to set aside its order of dismissal and Hexamer appealed.

III.

In seeking to enjoin the United States Postal Service and two of its officers from refusing to honor the Texas garnisment order, Hexamer claimed the defendants were violating 42 U.S.C. S651 and following. She sought actual damages, exemplary damages, attorneys' fees, court costs, and other relief.

Her claim was grounded in the original divorce decree wherein Tucker had been ordered by a Texas court to pay Hexamer $200.00 a month in child support beginning in June, 1973. In January, 1988, the Texas Attorney General was successful in obtaining a judgement on Hexamer's behalf for unpaid child support and an order for withholding of income. That was in addition to the Employer's Order to Withhold Earnings for Child Support which Hexamer had obtained in November of the previous year.

It is undisputed that Hexamer sent and Foreness received a certified copy of the Employer's Order to Withhold Earnings for Child Support. Nevertheless, just over a month after Hexamer had sent that order to defendants, an Arizona court quashed the employer's withholding order and ordered that no money be withheld by the United States Postal Service under that order. It was then that Hexamer brought this suit in district court under the Act, and under the supremacy clause and the full faith and credit clause of the Constitution, and the due process clause of the fifth amendment.

The defendants' motion to dismiss the suit urged that the real party in interest was the U. S. Postal Service which had not been properly served, thus depriving the district court of jurisdiction. In Hexamer's opposition to dismissal she asked for attorneys' fees and sanctions which were denied following a hearing on all pending motions. The district court agreed that the U.S. Postal Service was the real party in interest and gave Hexamer 60 days to amend her complaint and effect service on the U. S. Postal Service, which was done. Thereafter the district curt dismissed Hexamer's case for lack of subject-matter jurisdiction because she did not have a certificate from the Secretary of the Department of Health and Human Resources to pursue this action as required by 42 U.S.C., S660.

IV.

A federal court must dismiss any claim over which it cannot exercise subject-matter jurisdiction. Fed.R.Civ.P. 12(h)(3). Being a court of limited jurisdiction a federal court cannot exercise jurisdiction without an express statutory or constitutional grant. Murray v. Murray, 621 F.2d 103, 107 (5th Cir.1980). A federal court may determine its lack of subject-matter jurisdiction on the face of plaintiff's complaint alone, on the "complaint supplemented by undisputed facts evidenced in the record," or on the "complaint supplemented by undisputed facts plus the court's resolution of disputed facts." Williamson v. Tucker, 645 F.2d 404, 413 (5th Cir.), cert. denied. 454 U.S. 897 (1981).

The Act grants subject-matter jurisdiction to federal district courts "to hear and determine any civil action certified by the Secretary of Health and Human Services (the Secretary) under S652(a)(8) of this title." 42 U.S.C. S660. Certification by the Secretary is an absolute prerequisite to enforcement of child support decrees in federal courts Stevens v. U.S. Department of the Navy, 589 F.2d 783 (4th Cir. 1979); Kelley v. Kelley, 425 F.Supp. 181, 183 (W.D. La. 1977). Hexamer does not allege certification of her Complaint, and no certification appears in the record. The district court thus properly held that it could not exercise jurisdiction over Hexamer's statutory claim.

Hexamer's remaining constitutional arguments are wholly insubstantial and frivolous. The district court's lack of subject-matter jurisdiction is dispositive of all of Hexamer's contentions on appeal. Obviously, a court lacking subject-matter jurisdiction cannot require a government agency to comply with a decree of a state court. And, while the district court had the inherent power to impose sanctions on the defendants under Rule 11 for filing frivolous pleadings, we find it did not err in refusing to do so in this instance. Willy v. Coastal Corp., 90-2097, slip op. at 447 (5th Cir. Oct. 26, 1990).

The proper forum, if any, for Hexamer's claims is the Arizona court system. See Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986) (quoting District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, n.16, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)). Hexamer's appeal is

DISMISSED.

-APPENDIX B-

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 90-4311

MAURY HEXAMER,
Plaintiff-Appellant,

versus

PATRICK FORESNESS, Director,
ET AL.,
Defendants-Appellees.

Appeal from the United States District
Court for the
Eastern District of Texas

ON SUGGESTION FOR REHEARING EN BANC

(Opinion November 6, 5 Cir., 1990,
___F.2d____)

(DECEMBER 4, 1990)

Before GEE, SMITH, WIENER, Circuit Judges

PER CURIAM:

(/) Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED.

No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

( ) Treating the suggestion for rehearing as a petition for panel rehearing, the petition for panel rehearing is DENIED. The judges in regular active service of this Court having been polled at the request of one of said judges and a majority of said judges not having voted in favor of it (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT: /s/ J Wiener, J

United States Circuit Judge

-APPENDIX C-

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

MAURY HEXAMER, S
PLAINTIFF, S
S
v. S *
S
UNITED STATES POSTAL SERVICE, S
ET. AL., S
DEFENDANTS. S
S

*CIVIL ACTION NO.
S-88-119-CA

MEMORANDUM AND ORDER

On this day came on for consideration Defendant's SECOND MOTION TO DISMISS filed on December 18, 1989. The Plaintiff has responded with a MOTION TO STRIKE DEFENSE PLEADINGS. In examining all of the pending motions, the Court discovered a genuine question as to jurisdiction. After careful consideration of the facts in this case and the applicable law, the court finds that this cause should be dismissed for lack of subject matter jurisdiction.

Fed. R. Civ. P. 12(h)(3) states, "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisiction of the subject matter, the court shall dismiss the action." (Emphasis added) Where there is a lack of subject matter jurisdiction, a federal court must dismiss the cause of action even though the jurisdictional defect is noted by the court and not raised in motions of the parties. See Morrison v. Morrison, 408 F. Supp. 315 (N.D. Tex. 1976).

Plaintiff has brought this action against the Unied States Postal Service and two of its officers for failure to honor a writ of garnishment for the wages of her former husband Joseph Travis Tucker. Joseph Travis Tucker is a postal employee in Phoenix, Arizona. Plaintiff claims that the actions of the Postal Service are in violation of 42 U. S. C. 651 et. seq. Plaintiff also asserts that the actions of the defendants violate the Supremacy Clause and the Full Faith and Credit clause of the United States Constitution. On the basis of these assertions, plaintiff filed her action directly against the United States postal service in this Court.

The filing of an action pursuant to 42 U.S.C. 651 et. seq. does not automatically mean that a federal court has subject matter jurisdiction to decide the case on its merits. A federal court has neither original nor removal jurisdiction over suits to enforce state divorce decrees. See

Wilhelm v. United States Department of the Air Force, Accounting and Finance Center, 418 F. Supp. 162, (S. D. Tex. 1976).

Garnisment is a state created, not a federally created right. In noting this the court for the District of Nebraska said: "...[P]laintiff's right to receive child support arises under a State court judgement, the garnisment proceeding cannot be characterized as an action aganst the United States founded upon an Act of Congress." Golightly v. Golightly, 410 F. Supp. 861, 863 (D. Neb. 1976).

In considering whether Congress has granted federal courts subject matter jurisdiction by the passage of a certain law, the Fifth Circuit states: "The fact that Congress has legislated in a specific area, without more, does not empower a federal court to adjudicate matters arising from or requiring an interpretation of that legislation. Rather, a specific grant of subject matter jurisdiction must exist before a federal tribunal may so act." Murray v. Murray, 621 F. 2d. 103, 107 (5th Cir. 1980).

By the enactment of 42 U.S.C. S 659, Congress only intended to put the Federal Government on a par with private employers as far as garnisment proceedings were concerned. Congress never intended to create a new federal right to garnishment that would allow these essentially state court actions into federal court. See Morrison v. Morrison, 408 F. Supp. at 317.

A very limited procedure has been

provided for certain suits concerning child support to get into federal court. This procedure is set forth in 42 U.S.C. SS 660 and 652(a)(8):

42 U.S.C. S660 provides:

> The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health and Human Services under section 652(a)(8) of this title. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

42 U.S.C. S 652(a)(8) provides:

> (a) The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall -
>
> *************
>
> (8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against absent parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the absent parent within a reasonable

> time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications; ...

The court in Bolling v. Howland 398 F. Supp. 1313 (N. D. Tenn. 1975) in discussing these provisions stated:

> The inclusion of these provisions relating to the jurisdiction of the Federal courts, and the absence of an express jurisdictional grant under 42 U.S.C. S 659, illustrate the limited power vested in this court by the Congress.
>
> The language of 42 U.S.C. SS 659 and 660 leaves little room for doubt that the proper determination of jurisdiction in child support and alimony garnishment cases, such as these, limits access to the Federal courts to those instances where the Secretary of Health, Education, and Welfare first certifies the necessity pursuant to 42 U.S.C. S 652 (a) (8). The instant cases have not been so certified.

Id. at 1314, 1316. (Emphasis added).

In Kelly v. Kelly, 425 F. Supp 181, (W.D. LA. 1977) a former wife of an Air Force serviceman brought suit against both the United States and her former husband in state court asserting that she was entitled to a portion of the former husband's retirement checks. The case was removed to the United States District Court for the Western District of Louisiana. The court held that the lifting of sovereign immunity of the United States where garnishment actions were concerned did not mean that federal jurisiction was created and that:

(1) a debt owed by the United States only as a garnishee is not a basis for jurisdiction in Federal Court;

(2) 42 U.S.C. S 659 does not grant jurisdiction to Federal Courts, it merely waives the United States' immunity in two specific situations;

(3) 42 U.S.C. S 660 refers to 42 U.S.C. S 652(a)(8), and when the statute is read as a whole, it grants a plaintiff a

cause of action in Federal Court to hear only certain alimony and child support claims;

(4) receiving consent and certification from the Secretary of Health, Education, and Welfare is a jurisdictional prerequisite to sue in Federal Court for alimony or child support; and

(5) the traditional means of obtaining Federal jurisdiction under 28 U.S.C. S 1331 (federal questions), 28 U.S.C. S 1346(a) (original jurisdiction of Federal Courts), 28 U.S.C. S 1442(a) (removal of suits against federal officers or agencies) are unavailing to

plaintiffs suing under 42 U.S.C. SS 652-660.1

Id. at 183. In order to pursue this action in this Court the plaintiff must obtain a certificate from the Secretary of the Department of Health, Education and Welfare as required by 42 U. S. C. S660.

---

[1] All other internal footnotes omitted. This footnote appears in the text as Footnote #3 (number three) and read as follows: Wilhelm v. United States Department of the Air Force, 418 F. Supp. 162 (S.D.Tex., 1976); Popple v. United States, 416 F. Supp. 1227 (W.D. N.Y., 1976); Golightly v. Golightly, 410 F. Supp. 861 (D.C. Neb., 1976); Morrison v. Morrison, 408 F. Supp. 315 (N.D. Tex., 1976); West v. West, 402 F. Supp. 1189 (N.D. Ga., 1975) Bolling v. Howland, 398 F. Supp. 1313 (M.D. Tenn., 1975).

Plaintiff contends that 42 U.S.C. S 659 is not the only jurisdictional basis for her action. Plaintiff has asserted that the Postal Service's honoring of an Arizona state court decree over a Texas state court decree is a violation of the Full Faith and Credit clause enumerated in the Constitution of the United States and thus presents a jurisdictional basis for this Court to hear this case. The Court does not agree that conflicting state court orders confer jurisdiction upon a federal court under 42 U.S.C. S659. See Stephens v. United States Department of the Navy, 589 F.2d. 783 (4th Cir. 1979).

After carefully examining all of the pleadings in this case, the court has concluded that it lacks subject matter jurisdiction. It is, therefore, ORDERED that this cause be DISMISSED for want of this Court's jurisdiction over the subject matter involved in this controversy.

Signed this 26th day of February, 1990.

/s/ Paul Brown

UNITED STATES DISTRICT JUDGE

-APPENDIX D-

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

MAURY HEXAMER S
S
v. S *
S
PATRICK FORENESS, UNITED STATES S
POSTAL SERVICE, ET AL. S

*CIVIL ACTION NO. S-88-119-CA

ORDER

The Court has carefully considered Plaintiff's Motion to Set Aside Order of Dismissal. The Court remains persuaded for the reasons set forth in its Memorandum and Order of February 26, 1990, that the Court does not have jurisdiction of this dispute. The Court has consiered the judgement for unpaid child support and order for withholding income and the employer's order to withhold earnings for child support obtained by plaintiff in the 200th Judicial District Court of the State of

Arizona in and for the County of Maricopa. Plaintiff contends that this Court has jurisdiction under 28 U.S.C. S 1331 to resolve this dispute. Plaintiff has cited no legal authority to the Court which would support such a conclusion. Plaintiff's complaint is that the postal authorties have not honored her Texas state court orders, in violation of 42 U.S.C. SS 651 et seq., but as stated in the Court's Memorandum and Order, this statute did not create any federal cause of action.

It is, therefore, ORDERED that Plaintiff's Motion to Set Aside Order of Dismissal be, and the same is hereby, DENIED.

Signed this 4th day of April, 1990

/s/Paul Brown

UNITED STATES DISTRICT JUDGE

-APPENDIX E-

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
SHERMAN DIVISION

Maury Hexamer,)
Plaintiff,)
)
vs.) *
)
)
Patrick Foreness, Director;)
Postal Data Center, United)
States Post Office, et al.,)
Defendants,)

*Cause No. S-88-119-CA

PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Maury Hexamer, Plaintiff in the above-referenced cause, and files this Plaintiff's First Amended Complaint, pursuant to prior leave of Court. In support thereof, Plaintiff would show the Court as follows:

I.

JURISDICTIONAL STATEMENT

This is a suit for injunctive relief and damages against the United

States Postal Service and two of its agents, for refusing to honor a Texas Judicial Order (issued and filed pursuant to federal law) to withhold a portion of an employee's wages for current and past child support. This action by the defendants violates United States Constitution, Article VI, Section 2. In addition, this action violates United States Constitution, Article IV, Section 1. In addition, this action by the defendant federal agencies violates 42 U.S.C. 651 et seq.

This is also a suit for injunctive relief and damages against an unknown Arizona court which, according to representations of defendants, has issued an order purporting to quash the Texas order.

II.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Article VI, Section 2, states as follows:

> "This Constition, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." (emphasis supplied)

United States Constitution, Article IV, Section 1 states,

in relevant part, as follows:

> "Full faith and credit shall be given in each State to the ...judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

III.

The United States Postal Service is the governmental entity having payment responsibility for the monies involved. The head of said governmental entity is the Postmaster General. The United States Postal Service and the Postmaster General can be served with process in care of the General Counsel, United States Postal Service, 475 L'Enfant Plaza S.W., Washington, D.C.

IV.

Defendant Foreness is Director of the Postal Data Center for the United States Post Office and has been served with process at Postal Data Center, Twin Cities, A.M.F. Minnesota 55111-9630. Defendant Postmaster, United States Post Office in Phoenix, Arizona, and has been served with process at 4949 E. Van Buren, Phoenix, Arizona 85026-7400. Plaintiff does not yet know the name of Unknown Arizona Court; however, Plaintiff intends to serve the aforesaid Defendant as soon as she obtains sufficient information to determine his/her name and address.

V.

On November 9, 1987 a hearing was held in the District Court of Travis County, Texas, 200th Judicial District, in Cause No. 200,694, styled In the Interest of Gavin Travis Tucker a a Minor Child, pursuant to 42 U.S.C. Section 651 et. seq., as amended. The hearing was held on a motion by the Texas Attorney General to obtain a judgement for current and back child support on behalf of Plaintiff. As required by 42 U.S.C. Section 651 et seq, the Attorney General enforcement action was brought in the same court that rendered the original order to be enforced. A copy of the original order is attached hereto as Exhibit A. Respondent and Employee-Obligor in this action was Joseph Tucker. While Tucker was duly served with process, he failed to appear at the aforesaid hearing.

VI.

On November 23, 1988 the Master of the aforesaid district court of Texas issued certain recommendations. On January 4, 1988 these recommendations were adopted by the presiding judge of the aforesaid district court of Texas. Among other things, this judgement found past child support due in the amount of $34,000 unpaid and owing to Plaintiff from June 5, 1973 to and including July 5, 1987. A copy of this judgement is attached hereto as Exhibit B. Employee-Obligor Tucker did not appeal this judgement.

VII.

On November 25, 1987 the presiding judge of the 200th District Court issued an Employers Order to Withhold Earnings for Child Support. A copy of this judgement is attached hereto as Exhibit C. Among other things, this judgement ordered the employer for the child support Obligor, Joseph Travis Tucker, to withhold income from the aforesaid Obligor, beginning fourteen (14) days following the date the order was served on the employer, in the amount of $500.00 per month. Tucker did not appeal this order.

VIII.

On or about December 10, 1987 Defendant Postmaster was duly served with a certified copy of the Employer's Order by the Texas Attorney General, by certified mail, return receipt requested. On or about March 18, 1988 Defendant Foreness was served with a certified copy of the Employer's Order, by Express Mail. Defendant Postmaster is charged with the responsibility of notifying Defendant Foreness of judgements for child support which have been obtained pursuant to 42 U.S.C. Section 651 et. seq., against employees of the Phoenix, Arizona Post Office, as soon as the aforesaid Postmaster has received notice of the aforesaid child support judgement. Defendant Foreness is charged with the responsibility of withholding money from wages of employees of the United States Post Office in Phoenix, Arizona, where a judgement for child support has been obtained against said employee pursuant to 42 U.S.C. Section 651 et. seq., as amended.

IX.

Defendants United States Postal Service, Postmaster General, Foreness, and Phoenix Postmaster have refused to honor the Texas Employer's Order, thereby violating 42 U.S.C. 651 et seq. Through counsel and other employees, the aforesaid defendant have represented to Plaintiff that their refusal to honor the Texas Employers Order is based on an order to quash from an Arizona Superior Court indicating that the aforesaid defendants knowingly violated the constitutional mandate that federal agencies accord supremacy to federal law, "...anything in the ...laws of any State to the contrary notwithstanding..."

X.

Plaintiff has reason to believe that an unknown Arizona Superior Court knowingly acted contrary to requirements of the United States Constitution and beyond its jurisdiction to issue an order purporting to quash the Texas

Employers Order and depriving Plaintiff of certain rights without due process of law.

XI.

As a result of their failure and refusal to honor the Employer's Order, Plaintiff has thus far suffered damages in the amount of $7,200.00. In addition, if the aforesaid Defendants fail to withhold court-ordered child support payments in August, 1989, Plaintiff will suffer damages of an additional $300.00. If the aforesaid Defendants fail to withhold court-ordered child support payments thereafter, Plaintiff will suffer damages in the amount of $300.00 per month for the next approximately ten years. In additon, Plaintiff has suffered consequential damages. In addition, Plaintiff should be awarded exemplary damages for Defendants blatant and unlawful refusal to abide by a lawful order of the Texas courts based solely on an Arizona Order which is clearly void as having issued in violation of the United States Constitution.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays for actual damages, exemplary damages, attorney's fees, costs of court and for such other relief to which she may show herself to be entitled, against each and all of the defendants herein. In addition, Plaintiff prays that she be granted an immediate temporary injunction ordering the named defendants herein to withhold wages pursuant to the Texas Employers Order. Plaintiff prays that after trial of the instant case she be granted a permanent injunction ordering said defendants to so honor the Texas Employers Order. Plaintiff also prays that after trial of this case she be granted a permanent injunction against Defendant, Unknown Arizona Court, to honor all orders issued in Cause No. 200,694.

Respectfully submitted,

Maury Hexamer,
Plaintiff, pro se,

Rt. 2, Box 91Y
Sherman, Texas 75090
Tx. Bar 09562500

CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiff's First Amended Petition has been served on the attorney for Defendants Foreness and Phoenix Postmaster, by mailing a copy of same with postage prepaid, this 18th day of July, 1989 to the following address:

Dane Smith
Assistant U.S. Attorney
NCNB Center, Tower
110 North College, Suite 600
Tyler, Texas 75702

____
Maury Hexamer

-Exhibit A-

NO. 200,694

IN THE MATTER OF THE MARRIAGE OF X
X
MAURY TUCKER X
PETITIONER X
X
AND JOSEPH TRAVIS TUCKER X
RESPONDENT X

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
200th JUDICIAL DISTRICT

JUDGEMENT AND DECREE OF DIVORCE

On the 4th day of May, 1973, FINAL HEARING was held on the above entitled and numbered suit for divorce. Petitioner appeared in person and was represented by counsel, and announced ready for trial. Respondent, though duly cited by publication appeared not, and was represented by PATRICK C. HARGADON, a practicing attorney of the Bar of this Court who was appointed by the Court as attorney Ad Litem in accordance with Rule 244 of the Texas Rules of Civil procedure. All parties announced ready for trial.

Because a jury was not demanded by either party, the Court proceeded to try the cause.

JURISDICTION

THE COURT FINDS that it has jurisdiction over the cause and parties of this divorce.

Further, THE COURT FINDS that the Original Petition for divorce has been on file in this Court for not less than sixty (60) days prior to the hearing as required by law.

Further, THE COURT FINDS that all prerequisites of law have been complied with, and after examining the pleadings and hearing the evidence and argument of counsel, that the material allegations of the Petitioner's Petition for Divorce are substantialy correct and were proven by full and satisfactory evidence.

RESIDENCE

THE COURT FINDS that, as of the filing date of this cause, Petitioner had been a domiciliary of the State of Texas for a period of over one year and a resident of Travis County for a period of six months preceding the filing of this Petition.

DIVORCE

THE COURT FINDS that the Petitioner and Respondent were duly married under Texas law; furthermore, THE COURT FINDS that the marriage had become insupportable because of discord or conflict of personalities that destroyed the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the bonds of matrimony heretofore existing between the Petitioner and Respondent are dissolved and a decree of divorce is granted.

CHILDREN AND CUSTODY

THE COURT FINDS that the following children, now under the age of eighteen (18), were born to or adopted by the marriage:

NAME	AGE	DATE OF BIRTH	SEX
CHERISE DIANE TUCKER	7	11/16/64	Female
WYNNE ANDERSON TUCKER	6	6/9/66	Male
CLIFTON BERT TUCKER	4	11/17/67	Male
GAVIN TRAIVS TUCKER	2	5/25/70	Male

Further, THE COURT FINDS that it will be in the best interest of the minor children if the care, custody and control of the children is awarded to Petitioner, and that Respondent has the right of reasonable visitation privileges with the minor children at convenient times and under proper circumstances.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the care, custody and control of the above named children is awarded to Petitioner, and that Respondent is to have reasonable visitation privileges with the minor children at convenient times and under proper circumstances.

IT IS FURTHER ORDERED that Respondent's reasonable visitation privileges shall not extend beyond those times mutually agreed upon by the parties, and that said minor children shall be returned to the custody and control of the Petitioner by Respondent upon Petitioner's demand for such return. Failure to return the custody of the children by Respondent to Petitioner upon demand shall be deemed to be a violation of this Order of the Court.

CHILD SUPPORT

THE COURT FINDS that the Respondent is capable of gainful employment and is able to, and should, contribute to the support and care of the minor children of the marriage. Respondent's Social Security number is _______________.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Respondent pay the following amount of child support for the care and support of the minor children of the marriage:

THE SUM OF $ 200.00 (Two hundred dollars)

PAYABLE monthly on the 5th of each month

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said support is to commence on the 5th day of June, 1973, and each month thereafter, and is to continue until the youngest of the said children reaches the age of eighteen (18) years of age, subject to further orders of this Court. Respondent is ORDERED to pay any and all child support into the registry of this Court; any money not paid through the Registry of this Court is to be considered a gratuity and shall not be applicable to the child support obligation under this order.

Payment shall be made to:

DOMESTIC RELATIONS OFFICE
TRAVIS COUNTY COURTHOUSE, 4TH FLOOR
P.O. BOX 1748
AUSTIN, TEXAS 78767
PHONE: (512) 478-5761

Further, Respondent is ORDERED to keep the Domestic Relations Office informed at all times as to current residence, business address, and the status of employment.

PROPERTY

THE COURT FINDS that during the term of the marriage the parties acquired and own community property and that said property should be equitably divided.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the community property shall be divided as follows:

Petitioner is awarded the following

property as Petitioner's sole and separate property;

1. Petitioner's personal effects;

2. Any and all property in her possession, subject to any encumbrances thereon.

3. A 1953 Hudson Identification No. 7C 221 253; Wyoming Title No. 2-446003

DEBTS

The COURT FINDS that the community incurred certain debts and obligations.

IT IS THEREFORE ORDERED,ADJUDGED AND DECREED that the Respondent is responsible for any debts incurred prior to the seperation of the parties. These debts include: Allison Christen Clinic, Powell, Wyoming; Mr. Hunter Patrick, Attorney at Law, Powell, Wyoming; Eastern Bell Telephone Co. of Arlington Virginia and Navy Federal Credit Union of Arlington, Virginia.

Petitioner's former name of Hexamer is restored to her.

SIGNED FOR ENTRY, this 8th day of May, 1973.

/s/Herman Jones

Judge Presiding in the 200th District
Court of Travis County, Texas

APPROVED AS TO FORM AND CONTENTS:

/s/ Alberto Garcia

ALBERTO GARCIA
ATTORNEY FOR PETITIONER

/s/ Patrick Hargaden

PATRICK HARDAGON
ATTORNEY FOR RESPONDENT

-Exhibit B-

NO. 200,694

IN THE INTEREST OF) *
GAVIN TRAVIS TUCKER) *
A MINOR CHILD) *

*THE DISTRICT COURT OF
*TRAVIS COUNTY, TEXAS
*200th JUDICIAL DISTRICT

JUDGEMENT FOR UNPAID CHILD SUPPORT & ORDER FOR WITHHOLDING OF INCOME

On November 9, 1987, came to be heard the Movant's Motion To Reduce Unpaid Child Support To Judgement in the above styled and numbered cause.

Movant, Maury Marlene Hexamer, appeared in person and by attorney, Office of the Attorney General of Texas. Respondent, Joseph Travis Tucker, although duly and properly served, failed to appear.

The Master, having considered the

pleadings and heard the evidence and argument of counsel, finds that all necessary prerequisites of law have been legally satisfied and this Master has continuing jurisdiction over these matters and makes the following findings.

This Master finds that Movant brings this proceeding under Part D of the Title IV of the Federal Social Security Act, as amended (42 U.S.C. Section 651 et. seq.).

This Master finds that Respondent, having failed to answer or appear, has admitted all the material allegations of the Movant's Motion to Reduce Past Due Child Support to Judgemet.

This Master specifically finds as true, admitted and confessed each and every element in said motion as set forth in paragraphs 1 through 9. The

Master further incorporates as findings of fact paragraphs 1 through 8 of said motion, having heard testimoy of movant as to each allegation contained therein. The Motion is, therefore incorporated as part of this finding and recommendation as if paragraphs 1 through 8 were set forth verbatim in this order.

This Master further finds that Respondent is employed with the U.S. Postal Service in Phoenix, Arizona, as a full time employee, as testified to by Movant.

This Master finds that Respondent, Joseph Travis Tucker, was ordered by this Court to make payments of $200.00 per month beginning on the 5th day of June, 1973 through the Registry of the Court to the Managing Conservator for the support of the child, Gavin Travis Tucker, born 5-25-70, that Respondent, Joseph Travis Tucker possessed financial ability to pay the ordered child and that child support in the amount of $34,000.00 is unpaid andowing to Movant from June 5, 1973 to and including July 5, 1987.

IT IS RECOMMENDED that judgement be and is hereby granted to MAURY MARLENE HEXAMER, Movant against JOSEPH TRAVIS TUCKER, Respondent for the sum of thirty-four thousand dollars ($34,000.00 to be paid in installments of $300.00 per month beginning on December 5, 1987 being due and payable on the 5th day of each and every month thereafter until paid in full.

IT IS RECOMMENDED that interest on this judgement of 10% per year accrue from the date of this award, November 9, 1987, and further that an employer's order of withholding of income issue for the current support of $200.00 per month in addition to the istallment of $300.00 per month, for a total of $500.00 per month income deduction starting December 5, 1987. It is further recommended that when the child named herein reaches the age of 18 years, the income deduction will be reduced to $300.00 per month only, until the arrears are fully satisfied.

IT IS RECOMMENDED that all payments be paid through the Travis County Domestic Relations Office, P.O. Box 1748, Austin, TX 78767.

IT IS RECOMMENDED that Respondent, Joseph Travis Tucker, pay court costs to the Travis County District Clerk's Office, P.O. Box 1748, Austin, TX 78767.

Signed-November 23, 1987

/s/Tameri T. Arrigton

Master for the District Court

ORDER OF APPROVAL

On this date, the foregoing findings and recomendations were submited to the court by the duly appointed Master. Said recommendations are approved and the foregoing recommendations are adopted as the Orders of this Court and incorporated herein by reference the same as if set forth in their entirety in this order of approva.

SIGNED this 4 day of January, 1988.

/s/ Henry J. Strauss

PRESIDING JUDGE

-Exhibit C-

NO.200,694

IN THE INTEREST OF *
GAVIN TRAVIS TUCKER *
A MINOR CHILD *

*IN THE DISTRICT COURT OF
*TRAVIS COUNTY, TEXAS
*200th JUDICIAL DISTRICT

EMPLOYERS ORDER TO WITHHOLD EARNINGS FOR CHILD SUPPORT

The Court ORDERS you, the employer of the Obligor, to withhold income from the Obligor's disposable earnings from this employment as follows:

OBLIGOR

Name: Joseph Travis Tucker

Address: Phoenix, Arizona

Social Security Number: n/a

OBLIGEE

Name: Maury Marlene Hexamer

Social Security Number: 512-56-2379

Address: c/o Attorney General of Texas
Post Office Box 12090
Austin, Texas 78711-2090

CHILDREN

NAME	DOB	SSN
Gavin Travis Hexamer	5-25-70	

WITHHOLDING EARNINGS FOR CHILD SUPPORT

The Court ORDERS that any employer of the Obligor shall begin withholding from Obligor's disposable earnings no later than the first pay period which begins fourteen (14) day following the date this ORDER is served on the employer.

The amount of earnings to be withheld is:

(1.) $ 500.00 if the Obligor is paid monthly, which is

$ 200.00 on the current support and $300.00 on the arrearage owed.

(2.) $ 250.00 if the Obligor is paid twice monthly, which is

$ 100.00 on current support and $150.00 on the arrearage owed.

(3.) $ 230.76 if the Obligor is paid every other week, which is

$ 92.30 on current support and $138.46 on the arrearage owed.

(4.) $ 115.38 if the Obligor is paid weekly, which is

$ 46.15 on current support and $69.23 on the arrearage owed.

The employer IS ORDERED to withhold earnings in the above amount until May 25, 1988. In the first pay period following that date, IT IS ORDERED that the amount of earnings to be withheld is:

(1.) $ 300.00 if the Obligor is paid monthly, which is

$ -0- on the current support and $300.00 on the arrearage owed.

(2.) $ 150.00 if the Obligor is paid

twice monthly, which is

$ 150.00 on current support and

-0- on the arrearage owed.

(3.) $ 138.46 if the Obligor is paid every other week, which is

$ -0- on current support and

$138.46 on the arrearage owed.

(4.) $ 69.23 if the Obligor is paid weekly, which is

$ -0- on current support and

$69.23 on the arrearage owed.

EMPLOYER'S ORDER Page 2

The employer is ORDERED to withhold earnings in the above amount until May 25, 1998 . In the first paid period following that date, IT IS ORDERED that the amount of earnings to be withheld is: -0-

(1.) $ ________ if the Obligor is paid monthly, which is

$ ______ on the current support

and $______ on the arrearage owed.

(2.) $ ______ if the Obligor is paid twice monthly, which is

$ ______ on current support and ______ on the arrearage owed.

(3.) $ ______ if the Obligor is paid every other week, which is

$ ______ on current support and $______ on the arrearage owed.

(4.) $ ______ if the Obligor is paid weekly, which is

$ ______ on current support and $______ on the arrearage owed.

The employer IS ORDERED to withhold earnings in the above amount until ________________ . In the first pay period following that date, IT IS ORDERED that the amount of earnings to be withheld is:

(1.) $ ______ if the Obligor is paid monthly, which is

$ ______ on the current support and ______ on the arrearage owed.

(2.) $ _____ if the Obligor is paid twice monthly, which is

$ ______ on current support and _____ on the arrearage owed.

(3.) $ ______ if the Obligor is paid every other week, which is

$ _____ on current support and $______ on the arrearage owed.

(4.) $ ______ if the Obligor is paid weekly, which is

$ _____ on current support and $______ on the arrearage owed.

EMPLOYER'S ORDER-Page 3

The employer shall withhold earnings in the above amount for so long as the obligor is employed or until n/a

MAXIMUM AMOUNT WITHHELD

The maximum amount to be withheld shall not exceed 50 percent of the Obligor's disposable earnings.

METHOD OF PAYMENT

The Court ORDERS the employer to pay all amonts withheld on each regular pay day through:

NAME OF AGENCY:

Attorney General of Texas
Post Office Box 13499
Austin, Texas 78711-3499

All payments shall be made payable to Attorney General of Texas.

All payments shall identify the Obligor, Obligee, the Attorney General Case Number, which is 7006025741 .

CALCULATING DISPOSABLE EARNINGS

The employer shall calculate the Obligor's disposable earnings which are subject to withholding for child support, as follows:

a. Determine the "earnings" of the Obligor, which means compensation paid or payable for personal services, whether denominated as wages, salary bonus, or otherwise, including periodic payments pursuant to a pension, disability and retirement program and unemployment benefits.

b. Subtract the following sums to calculate the Obligor's "disposable earnings".

(1) any amounts required by law to be withheld, i.e., Federal Income Tax and Federal FICA or OASI tax (Social Security), Railroad Retirement Act contributions;

EMPLOYER'S ORDER Page 4

(2) union dues;

(3) nondiscretionary retirement contributions by the Obligor; and

(4) medical, hospitalization, and disability insurance coverage for the Obligor and his or her children.

MORE THAN ONE ORDER WITHHOLDING

In the event that you receive more than one "Writ of Withholding" or "Order of Income Withholding," for the named employee you shall pay an equal amount towards the current support portion of all orders or writs until each order is individually complied with, and thereafter pay equal amounts on the arrearage portion of all orders or writs until each order or writ is complied with, or unti the maximum total amount of allowable withholding, 50 percent of the obligor's disposable earnings, is reached.

NOTICE OF CHANGE OF EMPLOYMENT

The Court ORDERS an employer to notify this Court and the Obligee within seven (7) days of the date that the Obligor terminates employment. The employer is ORDERED to provide the Obligor's lst known address and the name and address of the Obligor's new employer, if known.

REFERENCE TO THE INCOME WITHHOLDING LAW

Attached to this Order is a copy of Texas Family Code 14.43, which sets froth rights, duties and potential liabilities of employers, in addition to the provisions of this ORDER.

Signed this 25th day of November, 1987.

/s/ Paul R. Davis, Jr.

JUDGE PRESIDING

APPROVED:
/s/ Demetri Anastasiadis

Assistant Attorney General
Child Support Enforcemet
Post Office Box 12090
Austin, Texas 78711-2090
(512) 463-2005
State Bar Card No. 01164480

-EXHIBIT F-

Mr Ryan/pep

18th July 1973

The Registrar,
District Court of Travis County,
200th Judicial District,
P.o. Box 1748
AUSTIN,
Texas 78767

Dear Sir,

Re: Case No. 200694 - Maury Tucker Petitioner and Joseph Travis Tucker, Respondent

We act for Joseph Travis Tucker, who was the Respondent in the above action, and the Plaintiff in an action he brought in the General Division of the High Court of Rhodesia.

On his instructions we enclose a photocopy of the Court Order made in his favor on the 21st June 1973 and a transcript of the evidence he gave in that matter.

We are asked particularly to draw your attention to his evidence set out in lines 11 to 14 of the transcript and we are instructed to record that no disrespect was intended to your Court. We record that Mr Tucker was advised by us to continue the proceedings already started by him here on the 30th April 1973, because according to Rhodesian Law your Court did not have jurisdiction to hear Mrs Tucker's petition.

You are requested to file this letter and annexure with the record of the above-quoted case so as to prevent any subsequent prosecution of Mr Tucker in Texas for Contempt of the Divorce Order already made.

Yours faithfully,

/s/ Gill

GILL, GODLONTON &